

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELATE CIVIL JURISDICTION**

**WRIT PETITION NO.2141 OF 1998**

Supriya Habbu  
Residing at A-A, 402,  
Sai Shrushti, Kharegaon  
Dist: Thane ..Petitioner

Vs.

1. K.V.Pendharkar College of Arts  
Science & Commerce  
Dombivli, Dist: Thane  
Through: its Principal
2. Dombivali Shikshan Prasarak Mandal  
Dombivali, Dist: Thane  
Through: Its Secretary
3. The University of Mumbai  
Through: Its Registrar  
Mumbai.
4. State of Maharashtra ..Respondents

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Mr.R.S.Apte with Mr. M.V.Limaye for Petitioner  
Mrs. S.S.Bhende, A.G.P. for Respondent No.4  
Mr.R.A.Rodrigues with Mr. B.V.Phadnis for  
Respondent No.3

**CORAM: F.I. REBELLO &  
S.P. KUKDAY, JJ.  
DATE: 2ND MAY, 2005.**

**JUDGMENT (P.C. S.P. KUKDAY, J.)**

. The Petitioner is presently working as Lecturer in English with Respondent No.1. College. Two posts of Lecturer in English were advertised on 10th April, 1992. Both the posts were shown to be reserved. As the reserved candidates were not available, Petitioner came to be appointed on temporary basis by order dated 26th June, 1992.

Since then the posts were regularly advertised for six years. However, as the candidates from the reserved category were not available the Petitioner was continued on the said post by Respondent No.1. In the mean while the Petitioner has completed State Eligibility Test and has become eligible for being confirmed in the said post. In spite of the fact that the post was advertised on six occasions, Respondent NO.1 did not initiate process for de-reservation of the post in accordance with the policy of the Government and circular dated 17th July, 1996 issued by the University. Respondent No.1 re-advertised the post for the seventh year on 14th June, 1997 and by letter dated 20th March, 1998 terminated service of the Petitioner with effect from 20th April, 1998. Being aggrieved by the order of termination, the Petitioner has approached this Court by filing present Petition for a direction to Respondent Nos.1 and 2 to confirm her in the said post after completing dereservation process as per policy of the Government and the University.

2. At the time of admission of Petition interim relief was granted in terms of prayer clause (d) of the Petition by order dated 8th May, 1998, restraining the Respondents from issuing further advertisement and for continuing services of the Petitioner.

3. On behalf of Respondent NO.3 Mr. Dinesh Kamble, Deputy Registrar has filed affidavit in reply. According to Respondent No.3 proposal submitted by Respondent No.1 College is forwarded to the Government of Maharashtra (Respondent NO.4) on 7th March, 2002. However, till today the Government has not taken any decision. Respondent No.3 University is bound by the policy of the Government as per Section 7(2) of the Maharashtra University Act, 1994. As the Government has not communicated any decision no further steps are taken.

4. Petitioner is continuously in service for six years and holds requisite qualification for being appointed as a Lecturer in English. As per G.R. dated 25th January, 1990, if no candidate is available from reserved category for being appointed to the reserved post, though the post is advertised consecutively for five years, a policy of interchangeability is to be followed while advertising the post for sixth year. In spite of this if the candidate from reserved category is not available, the post can be de-reserved and a candidate from open category can be confirmed in the said post. In pursuance of this Government resolution, University of Mumbai has issued circular dated 17th July, 1996 for issuing guidelines in

respect of the procedure to be followed for de-reservation of the post. Having regard to the policy adopted by the Government as well as by the University, Respondent No.1 should have followed the principle of interchangeability while publishing advertisement for the sixth year and should have forwarded proposal for deservation of the post as candidate from reserve category is not available. Respondent No.1 did not follow this procedure. Instead the services of Petitioner were terminated by order dated 20th March, 1997 with effect from 20th April, 1998. Having regard to circular dated 17th July, 1996 of the University, and the Policy of the Government, order of termination issued by the Respondent No.1 cannot be sustained.

6. Advertisements published for six years are annexed to the Petition. From these advertisements it can be seen that the Rule of interchangeability is substantially followed by making it clear that candidates from other backward categories can also apply for the post. Therefore, there is substantial compliance of the requirements for dereservation of the post. In Writ Petition No.3101 of 2004 in the matter of **Ashok Chandrashekar Rao Vs. University of Mumbai & four others** this Court has taken a view that in the event there has been a substantial compliance, ordinarily the Government ought to

dereserve the post in terms of the resolution, as long as there are no malafides and that the attempt is not to protect candidates from the open categories. Similar view is taken in Writ Petition No.2676 of 2004 in the matter of Mrs. Chandana M. Rege Vs. The Principal, Ramnarain Ruia College of Arts & Science, Mumbai & Ors. In the present case also there is a substantial compliance of the requirements for de-reservation of the post therefore, there can be no impediment in de-reserving the post. Affidavit in reply of Respondent No.3 and forwarding letter dated 7th March, 2002 addressed by the University to the Principal of respondent No.1 College shows that in view of the directions of this Court in Writ Petition Nos.2591 of 2000 and 3398 of 2000 a proposal for dereservation of the post for English and Accountancy is forwarded to the Government. Respondent No.4 Government has not taken any decision though the proposal was forwarded by the University on 7th March, 2002 in pursuance of the directions of this Court. Though served Respondent No.4 has not filed any reply.

. As all the requirements for the dereservation of post are complied with, in view of the apathy of the Government for a period of about three years, directions are can be given to the

University to grant permission to Respondent No.1 for confirming the Petitioner in the Post of Lecturer in English with effect from the date of her first appointment i.e. on 26th June, 1992. Respondent No.3 is thus directed to grant permission to Respondent No.1 to issue order confirming the Petitioner in the post of Lecturer for English within a period of **four weeks** from today. Respondent no.1 shall then pass an appropriate order in respect of the confirmation of the Petitioner in the post of Lecturer for English subject with effect from 1992 and the Respondents shall pay wages and emoluments due to the Petitioner within a period of four months from the date of the order.

. Accordingly the Rule is made absolute in terms of the above observation, however, there shall be no order as to costs.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)